

SMITH HULSEY & BUSEY

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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA**

In re:) Chapter 11
BCE WEST, L.P., et al.) Case Nos. 98-12547 through
Debtors.) 98-12570 PHX CGC
Jointly Administered
_____)

**LIMITED OBJECTION TO
MOTION TO REJECT LEASES**

RRC Acquisitions, Inc., and Regency Realty Corporation, as general partner of Regency Centers, L.P. (collectively, "Regency"), object to the debtors' motion to reject leases (the "Motion"), to the extent (i) the debtors seek to reject the leases effective the earlier of the entry of an order approving the Motion or the date the "respective Debtor vacated the Lease premises", and (ii) the debtors seek to bind Regency to any rejection damage claim (the "Objection"). In support of the Objection, Regency states:

1. Regency leases store number 88 (located in Kingsdale Plaza) and store number 556 (located in Palm Harbour Shopping Center) to the debtors (collectively, the

"Leases"). The debtors vacated the Palm Harbour store at least one year before the petition date and vacated the Kingsdale store immediately prior to the petition date. Despite vacating the premises, the Leases have not been terminated and the debtors thus continue to be obligated to pay rent under the lease terms.

2. Pursuant to 11 U.S.C. § 365(d)(3), the debtors are required to pay rent on a timely and ongoing basis until any such lease is rejected. And that rent must be paid in full regardless of whether the debtor is occupying the property or not. See, e.g., in re Pacific- Atlantic Trading Co., 27 F.3d 401 (9th Cir. 1994); In re Bryant Universal Roofing, Inc., 218 B.R. 948 (Bankr. D. Ariz. 1988).

3. The debtors attempt to avoid paying this requisite administrative rent by making their rejection of the Leases effective prior to the entry of an order of this Court approving the Motion. This the debtors cannot do because a rejection is effective only upon entry of a Court order. See, e.g., In re C-T Virginia, Inc., 135 B.R. 501 (W.D. Va. 1991). To permit anything else would be impractical, inequitable and contrary to the law.

Section 365 and the accompanying Bankruptcy Rules are designed to provide a degree of factual certainty in determining the actual date of rejection. Moreover the requirements of notice and opportunity for a hearing under Bankruptcy Rule 9014 provide the creditors and the court with an opportunity to examine the efficacy of a debtor's decision to reject a lease under the guidelines of the business judgment test. It may be, on certain occasions, that a debtor's decision to reject an unexpired lease would not be in the best interests of the estate or the creditors, and the requirement of court approval operates as a safeguard to

protect against a unilateral decision by the debtor that could be prejudicial to the creditors.

... [T]o set the effective date of rejection earlier than the order approving it would put the lessor in an unfairly awkward position: even though the debtor in possession may already have left the premises and may no longer be paying rent, the lessor would be ill-advised to relet the property because the court may not approve the rejection.

Matter of Federated Dept.
Stores, Inc., 131 B.R. 808
(S.D. Ohio 1991).

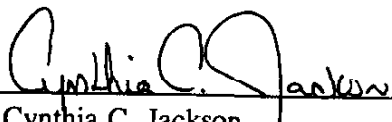
This is exactly the position Regency has been put in if the Court grants the Motion as proposed. If Regency had relet the premises before entry of an order approving it, Regency could be subjected to sanctions for violating the stay and at the very least, would be at risk of having leased the premises to two different entities. Regency should not be forced to keep the property open for the debtors for free or risk such likely results.

4. Regency also objects to the Motion to the extent it seeks to bind Regency to any stated rejection damages. And contrary to the amounts so stated by the debtors, Regency is owed in excess of \$63,416.91 through the end of the Palm Harbor Lease term and in excess of \$282,5233.46 through the end of the Kingsdale Lease term.

WHEREFORE, for the forgoing reasons, Regency objects to the Motion and requests that the Court enter an order denying the Motion to the extent it purports to (i)

make any rejection effective prior to entry of a Court order, and (ii) bind Regency to a damage amount.

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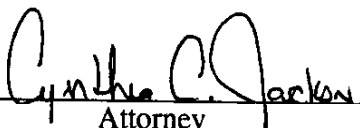
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Certificate of Service

I certify that a copy of this document has been furnished by Federal Express to Randolph J. Haines, Lewis and Roca, LLP, 40 North Central Avenue, Phoenix, Arizona 85004-4429, and H. Rey Stroube, III, Esq. and S. Margie Venus, Esq., Akin, Gump, Strauss, Hauer & Feld, L.L.P., 1900 Pennzoil Place - South Tower, 711 Louisiana, Houston, Texas 77002, this 19th day of October, 1998.



Attorney

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